

**International Association of Bridge, Structural and Ornamental Iron Workers, Local Union No. 118 and Clark & Sullivan Constructors, Inc.**  
Case 32-CD-127

October 4, 1991

**DECISION AND DETERMINATION OF DISPUTE**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

The charge in this Section 10(k) proceeding was filed on May 1, 1991, by Clark & Sullivan Constructors, Inc. alleging that Respondent Iron Workers Local 118 violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing Clark & Sullivan to assign certain work to employees it represents rather than to employees represented by Carpenters Local 971. The hearing was held on July 10, 1991, before Hearing Officer Barbara D. Davison. Clark & Sullivan filed a posthearing brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

**I. JURISDICTION**

Clark & Sullivan, Inc., a Nevada corporation, is a general contractor engaged in the construction of public buildings and other facilities. In the 12 months preceding the hearing, it purchased and received at construction jobsites within the State of Nevada goods valued in excess of \$50,000 directly from points outside the State of Nevada. We find that Clark & Sullivan is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Iron Workers Local 118 and Carpenters Local 971 are labor organizations within the meaning of Section 2(5) of the Act.

**II. THE DISPUTE**

*A. Background and Facts of Dispute*

In mid-1990, Clark & Sullivan began work as the general contractor on the Supreme Court Courthouse Building and parking structure in Carson City, Nevada. The parking structure and courthouse were to be built largely out of precast concrete panels manufactured by Con-Force Structures. The panel installation process involves: (1) precise building site survey and layout of the work; (2) prewelding of iron supports to the structural steel skeleton; (3) off-loading and lifting of a

panel to the point of installation; (4) positioning of the panel; (5) bolting the panel; (6) final alignment.

On November 5, 1990, various employer and union representatives met for a prejob conference concerning a jobsite other than the courthouse building site. Among those present were Clark & Sullivan President B. J. Sullivan, Carpenters Local 971 Business Agent Dana Wiggins, and Iron Workers Local 118 Business Agent Richard Ciesynski. Roland Christenson, Michael Busick, and Jack Chesney also attended the meeting on behalf of their respective unions.

Sullivan testified that during the prejob conference Ciesynski accused Wiggins of taking work from the Iron Workers. When Sullivan commented that Wiggins was very good about getting out to meet with employers, Ciesynski told Sullivan there would be picketing if carpenters performed the welding work on precast panels at the courthouse jobsite. Ciesynski testified that he did not threaten to picket Clark & Sullivan. Christenson testified that he did not hear Ciesynski threaten to picket. Busick and Chesney both testified that Ciesynski made no such threat.

The Employer subsequently subcontracted the precast panel installation work to Con-Force Structures. Con-Force assigned all installation work, including the welding work, to employees represented by Carpenters Local 971.

On about December 28, 1990, Iron Workers Local 118 filed a lawsuit in Nevada state court alleging that Clark & Sullivan and Con-Force were violating the State's prevailing wage law by using employees other than members of Iron Workers or nonunion employees of that craft to perform the precast panel welding and installation work at the courthouse building site. The suit sought a permanent injunction against "the use of non-skilled laborers in a jurisdictional area which has by custom, practice and agreement been assigned to the Iron Workers, members of Local Union 118 and those other similar non-members who would otherwise be paid the prevailing wage rates for their skilled labor." The suit also sought an award of general damages for members of Iron Workers and a similar class of nonmembers for the loss of wages and skilled positions allegedly resulting from the defendants' use of other employees to perform the precast panel work.

By a series of letters dated May 21, June 13, and July 5, 1991, counsel for Iron Workers Local 118 purported to deny or repudiate the alleged threat to picket and to disclaim interest in the precast panel welding work at the courthouse jobsite. On July 5, 1991, Iron Workers Local 118 attempted to amend its prevailing wage law complaint so that the requested injunction would not preclude the employment of employees other than ironworkers but would preclude the payment of wages less than the alleged prevailing wage of skilled ironworkers. Iron Workers Local 118 continues

to assert in the amended complaint that the work at issue is within its craft jurisdiction, and it continues to seek general compensatory damages for its members, as well as for nonunion ironworkers.

### B. Work in Dispute

The disputed work involves the welding on precast concrete panels at the Supreme Court Building project in Carson City, Nevada.

### C. Contentions of the Parties

Clark & Sullivan contends that: (1) Iron Workers Local 118 violated Section 8(b)(4)(D) of the Act by its agent's November 5, 1990 demand for the disputed work and threat to picket; (2) the attempted disclaimer of interest in the work in dispute by Iron Workers Local 118 is invalid and ineffective because it is inconsistent with the maintenance of the prevailing wage lawsuit; and (3) the disputed work should be awarded to employees represented by Carpenters Local 971 on the basis of the factors of collective-bargaining agreements, employer preference and past practice, area practice, relative skills, and economy and efficiency of operations. Iron Workers Local 118 denies that it has threatened to picket and further asserts that the Section 10(k) notice of jurisdictional dispute should be quashed because it has effectively disclaimed any interest in the work in dispute.<sup>1</sup>

### D. Applicability of the Statute

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k), it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for voluntary adjustment of the dispute.

Based on the testimony of Clark & Sullivan President Sullivan, there is reasonable cause to believe that Iron Workers Local 118 Business Agent Ciesynski threatened to picket the courthouse jobsite if the disputed work were assigned to employees represented by Carpenters rather than by Iron Workers.<sup>2</sup> Furthermore, we find that attempts by Iron Workers Local 118 to disclaim interest in the work in dispute are ineffective because they are inconsistent with continuing claims in its prevailing wage lawsuit that this work "is within the craft jurisdiction of Iron Workers" and that com-

pensatory damages should be awarded to its members and nonmember employees of its craft for the loss of work.

Based on the foregoing, we find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.

### E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of the dispute.

#### 1. Collective-bargaining agreements

Neither Clark & Sullivan nor its subcontractor Con-Force have a collective-bargaining agreement with Iron Workers Local 118. Both employers are signatory to a multiemployer association collective-bargaining agreement with Carpenters Local 971. This agreement, effective from July 1, 1988, through June 30, 1993, provides that its terms shall apply, inter alia, to "All building construction, including but not limited to the construction, erection, alteration, repair, modification, demolition, addition or improvement in whole or in part of any building structure." We find that the factor of collective-bargaining agreements favors an award of the work in dispute to employees represented by Carpenters Local 971.

#### 2. Company preference and past practice

Clark & Sullivan President Sullivan testified that his company's preference and past practice was for the disputed work to be performed by employees who are represented by Carpenters Local 971. Wilford McKee, manager of the engineering department for Con-Force Structures, gave similar testimony with respect to that employer's preference and past practice. Accordingly, this factor favors an award of the disputed work to employees represented by Carpenters Local 971.

#### 3. Area practice

Carpenters Local 971 Business Agent Wiggins testified that the overwhelming majority of precast panel welding jobs in the Reno area during the preceding 2-1/2 years had been performed by carpenters. We find

<sup>1</sup> Neither Con-Force nor Carpenters Local 971 appeared at hearing or filed posthearing statements of position.

<sup>2</sup> Although Ciesynski and other union witnesses testified that he did not threaten to picket, it is well established that a conflict in testimony does not require resolution or preclude proceeding to a consideration of the merits of the jurisdictional dispute under Sec. 10(k) because the Board is only required to find evidence supporting a reasonable cause to believe that Sec. 8(b)(4)(D) has been violated. E.g., *Electrical Workers IBEW Local 400 (E. T. Electrical)*, 285 NLRB 1149, 1150 (1987).

that this factor favors an award of the disputed work to employees represented by Carpenters Local 971.

4. Relative skills and economy and efficiency of operations

Sullivan testified that carpenters have extensive experience in the welding function associated with the installation of precast concrete panels. He also testified that the Carpenters provides over 100 hours of welding training for apprentices as well as welding refresher training programs for journeymen. McKee testified that it was more efficient to use carpenters for the entire precast panel manufacture and installation process. If ironworkers performed the disputed welding work, they would work only briefly and would not be able to assist in other phases of the process. Accordingly, we find that the factor of relative skills and economy and efficiency of operations favors an award of the disputed work to employees represented by Carpenters Local 971.

Conclusions

After considering all the relevant factors, we conclude that employees represented by Carpenters Local 971 are entitled to perform the work in dispute. We reach this conclusion by relying on the factors of collective-bargaining agreements, employer preference and past practice, relative skills, and economy and efficiency of operations. In making this determination, we

are awarding the work to employees represented by Carpenters Local 971 not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Clark & Sullivan Constructors, Inc. and/or Con-Force Structures, Inc. represented by the United Brotherhood of Carpenters and Joiners of America, Local No. 971, are entitled to perform the welding on precast concrete at the Supreme Court Building project in Carson City, Nevada.

2. International Association of Bridge, Structural and Ornamental Iron Workers, Local Union No. 118 is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Clark & Sullivan Constructors, Inc. or Con-Force Structures, Inc. to assign the disputed work to employees represented by it.

3. Within 10 days from this date, International Association of Bridge, Structural and Ornamental Iron Workers, Local Union No. 118 shall notify the Regional Director for Region 32 in writing whether it will refrain from forcing Clark & Sullivan or Con-Force Structures, Inc., by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.